

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KAREN CALLAHAN,	§	
(formerly Karen Artysiewicz),	§	No. 542, 2006
	§	
Petitioner Below,	§	Court Below: Family Court of
Appellant,	§	the State of Delaware, in and
	§	for New Castle County in
v.	§	CN04-10168.
	§	
JOHN K. ARTYSIEWICZ,	§	
	§	
Respondent Below,	§	
Appellee.	§	

Submitted: November 30, 2006

Decided: January 22, 2007

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 22nd day of January 2007, the Court has considered a motion to dismiss filed by the appellee (“Husband”), a response to the motion filed by the appellant (“Wife”), and the Family Court record as it was lodged in this Court on November 30, 2006, and it appears to the Court that:

(1) Wife filed this appeal from decisions issued by the Family Court on ancillary matters and on reargument (collectively “the Family Court’s decisions”). Husband has filed a motion to dismiss on the basis that Wife filed the notice of appeal before the Family Court ruled on a pending motion for

attorney's fees ("fees motion"). Wife responds that she does not oppose dismissal of the appeal so long as it is without prejudice to her right to appeal the Family Court's decisions once the Family Court has ruled on the fees motion.

(2) The Family Court's decisions issued on August 11, 2006 and September 15, 2006. Husband filed the fees motion on September 27, 2006. Wife filed the notice of appeal on October 4, 2006. The Family Court has not ruled on the fees motion.¹

(3) In civil cases, this Court has jurisdiction to accept appeals only from final orders issued by judges of the Family Court.² The Court has consistently held that an order is not final and appealable until the judge has ruled on an outstanding application for attorney's fees.³

¹It appears from the record that Wife filed a motion to stay in the Family Court. By order dated October 27, 2006, the Family Court granted a stay "pending the outcome of [Wife's] appeal."

²*Redden v. McGill*, 549 A.2d 695 (Del. 1988).

³*Lipson v. Lipson*, 799 A.2d 345, 348 (Del. 2001). *But cf.* Del. Supr. Ct. R. 41 (2007) (governing certification of question of law arising in case before entry of final order); Del. Supr. Ct. R. 42 (governing exercise of jurisdiction to hear appeal from interlocutory order); Del. Fam. Ct. Civ. R. 54(b) (providing for entry of final order upon one claim or party when action presents more than one claim).

(4) In this case, Wife's appeal is premature because she filed the notice of appeal before the Family Court judge ruled on the fees motion. Although this appeal must be dismissed, Wife is not precluded from filing an appeal from the Family Court's decisions once the Family Court judge has decided the outstanding fees motion.⁴

NOW, THEREFORE, IT IS ORDERED, that the motion to dismiss is GRANTED. This appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴See *Saldanha v. Saldanha*, 2005 WL 2233215 (Del. Supr.) (citing *Julian v. State*, 440 A.2d 990 (Del. 1982)); e.g., *Connell v. Cassello*, 1998 WL 188564 (Del. Supr.) (concluding that dismissal of premature appeal did not preclude appellant from filing appeal once final order issued).